

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

TRACY NEIGHBORS AND BARBARA  
NEIGHBORS; ARUL MENEZES AND  
LUCRETIA VANDERWENDE; LAKE  
SAMMAMISH 4257 LLC; HERBERT  
MOORE AND ELYNNE MOORE; TED  
DAVIS AND ELAINE DAVIS; REID  
BROWN AND TERESA BROWN; SHAWN  
HUARTE AND TRINA HUARTE; ANNETTE  
MCNABB; EUGENE MOREL AND  
ELIZABETH MOREL; VOLKER ELSTE  
AND GAIL UREEL; JOHN R. WARD AND  
JOANNA WARD, AS CO-TRUSTEES OF  
THE WARD HALES LIVING TRUST; YORK  
HUTTON; L. LARS KNUDSEN AND LISE  
SHDO,

Plaintiffs,

v.

KING COUNTY, a municipal corporation and  
political subdivision of the State of  
Washington,

Defendant.

No. 2:15-CV-01358

**ANSWER AND COUNTERCLAIM OF  
DEFENDANT KING COUNTY**

COMES NOW defendant King County, by and through its attorneys of record, both to  
answer plaintiffs' complaint and to counterclaim as set forth below. In answer to plaintiffs'

1 Complaint, Defendant admits, denies and alleges as set forth below. Each and every allegation  
2 contained in plaintiffs' Complaint not expressly admitted in full below is denied. The paragraph  
3 numbers in the Answer below correspond to the paragraph numbers in plaintiffs' Complaint:

#### 4 THE PARTIES

5 1.-13. Answering paragraphs 1-13 of the Complaint, King County is presently without  
6 sufficient information to answer the allegations of fact contained in those paragraphs and  
7 therefore denies them.

8 14. Answering paragraph 14 of the Complaint, King County admits that it is a home rule  
9 charter county and a political subdivision of the State of Washington of the State of Washington.

#### 10 JURISDICTION AND VENUE

11 15. Answering paragraph 15 of the Complaint, King County denies that the state court has  
12 jurisdiction of the claims and defenses in this action.

13 16. Answering paragraph 16 of the Complaint, King County admits that RCW 4.12.010 is  
14 the mandatory venue statute applicable to plaintiffs' action, that the portion of the East Lake  
15 Sammamish Rail Corridor ("ELSRC") implicated by plaintiffs' action is located in King County  
16 and that defendant King County is located within the geographic boundaries of King County. To  
17 the extent that this paragraph includes any additional allegations of fact, King County denies the  
18 same.

#### 19 FACTS

20 17. Answering paragraph 17 of the Complaint, King County admits that various railroad  
21 companies operated trains over the ELSRC, which is adjacent to the east shore of Lake  
22 Sammamish in the cities of Issaquah, Sammamish and Redmond. Except as so admitted, King  
23 County denies each and every other allegation of fact in this paragraph and specifically denies  
24 plaintiffs' allegation that the ELSRC is "narrow."

25 18. Answering paragraph 18 of the Complaint, King County admits that it currently  
26 possesses all property interests in the ELSRC that were formerly held by BNSF and Land

1 Conservancy of Seattle pursuant to the specified deeds, but denies that the ELSRC is properly  
2 characterized as a “right of way” over its entire length.

3 19. Answering paragraph 19 of the Complaint, King County admits that it possesses  
4 property rights under the specified deeds that cover the entirety of the ELSRC and grant King  
5 County exclusive control over the ELSRC, including the right to allow public use of the ELSRC.  
6 King County further admits that it has constructed an interim trail over the ELSRC and a  
7 permanent trail over portions of the ELSRC. It further admits that it has applied for permits for  
8 further development of the interim trail over a portion of the ELSRC, but denies the remaining  
factual allegations in this paragraph.

9 20. Answering paragraph 20 of the Complaint, King County denies the same.

#### 10 CLAIM FOR DECLARATORY RELIEF

11 21. Answering paragraph 21 of the Complaint, King County denies the same.

12 22. Answering paragraph 22 of the Complaint, King County denies the same.

13 23. Answering paragraph 23 of the Complaint, King County denies the same.

14 24. Answering paragraph 24 of the Complaint, King County admits that some or all of  
15 plaintiffs have constructed walkways, driveways, parking areas, landscaping systems, utilities and  
16 have planted landscaping within the ELSRC. Except as so admitted, King County denies each  
and every additional allegation contained in paragraph 24.

17 25. Answering paragraph 25 of the Complaint, King County denies the same.

18 26. Answering paragraph 26 of the Complaint, King County denies the same.

#### 19 CLAIM FOR QUIET TITLE

20 27. Answering paragraph 27 of the Complaint, King County denies the same.

#### 21 KING COUNTY’S COUNTERCLAIM FOR QUIET TITLE, EJECTMENT AND 22 DECLARATORY JUDGMENT

23 Counterclaim ¶1. In the event that this case is not dismissed in its entirety under federal  
preemption, King County asserts the following Counterclaim.

1 Counterclaim ¶2. As Counterclaim Plaintiff, King County re-alleges its answers to ¶¶1-27  
2 of the Complaint as if fully set forth herein.

3 Counterclaim ¶3. King County owns fee title or exclusive railroad easement rights  
4 characterized as a “quasi-fee” in the portions of the ELSRC that are adjacent to plaintiff’s  
5 property.

6 Counterclaim ¶4. Plaintiffs have interfered with King County’s property rights in the  
7 ELSRC by erecting and maintaining various unauthorized improvements that impede King  
8 County’s access to its property and prevent public enjoyment.

9 Counterclaim ¶5. Under RCW 7.28, title to the disputed portion of property should be  
10 quieted in King County.

11 Counterclaim ¶6. Plaintiffs should be required to remove any unauthorized improvements  
12 erected and maintained within the ELSRC.

13 Counterclaim ¶7. Plaintiffs should be required to pay current and back rent and/or special  
14 use fees for all unauthorized uses of the ELSRC.

#### 15 FURTHER ANSWER AND AFFIRMATIVE DEFENSES

16 BY WAY OF FURTHER ANSWER and AFFIRMATIVE DEFENSES to plaintiffs’  
17 Complaint, and without admitting anything previously denied, King County asserts the following  
18 affirmative defenses against each plaintiff.

19 1. Plaintiffs, in whole or in part, have failed to state a claim upon which relief may  
20 be granted.

21 2. Plaintiffs have failed to join indispensable parties.

22 3. Plaintiffs have failed to establish personal jurisdiction by properly serving King  
23 County.

4. Plaintiffs, in whole or in part, have stated claims under Washington law that are  
preempted by federal law.

5. Plaintiffs, in whole or in part, have stated claims that are barred by the statute of

1 limitations.

2 6. Plaintiffs, in whole or in part, have stated claims that are barred by the doctrine of  
3 laches.

4 7. Plaintiffs, in whole or in part, have stated claims that are barred by the doctrine of  
5 waiver.

6 8. Plaintiffs, in whole or in part, have stated claims that fail because plaintiffs  
7 acquiesced in the acts about which plaintiffs now complain.

8 9. Plaintiffs, in whole or in part, have stated claims that are barred by the doctrine of  
9 estoppel.

10 10. Plaintiffs, in whole or in part, have stated claims that they, or their predecessors in  
11 title, have previously released.

12 11. Plaintiffs, in whole or in part, are not the real parties in interest.  
13 King County reserves the right to amend this Answer and assert additional affirmative defenses.

14 WHEREFORE, having answered Plaintiff's Complaint, King County requests that this  
15 Court DISMISS Plaintiff's Complaint with prejudice, GRANT King County's Counterclaims, and  
16 award Defendant King County its costs and reasonable attorney's fees, and award such other and  
17 further relief as this Court may deem just and equitable.

18 Dated this 24<sup>th</sup> day of August, 2015.

19 DANIEL T. SATTERBERG  
King County Prosecuting Attorney

20 By: s/ David J. Hackett  
DAVID HACKETT, WSBA #21236  
Senior Deputy Prosecuting Attorney

21 By: s/ H. Kevin Wright  
22 H. KEVIN WRIGHT, WSBA #19121  
23 Senior Deputy Prosecuting Attorney

1 By: s/ Peter G. Ramels  
2 PETER G. RAMELS, WSBA #21120  
3 Senior Deputy Prosecuting Attorney

4 By: s/ Andrew W. Marcuse  
5 ANDREW W. MARCUSE, WSBA #27552  
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**DECLARATION OF FILING AND SERVICE**

I hereby certify that on August 24, 2015, I electronically filed the foregoing Notice to Plaintiffs of Removal with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

John T. Ludlow  
Hanson Baker Ludlow Drumheller P.S.  
2229 112<sup>th</sup> Avenue NE, Suite 200  
Bellevue, WA 98004  
(425) 454-3374  
[jludlow@hansonbaker.com](mailto:jludlow@hansonbaker.com)

I declare under penalty of perjury under the laws of the United States and the State of Washington that the foregoing is true and correct.

DATED this 24<sup>th</sup> day of August, 2015 at Seattle, Washington.

s/ Kris Bridgman  
Kris Bridgman, Legal Secretary  
King County Prosecuting Attorney's Office